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1950 K File No. O. Munis Dist. 50

Legal Department—
A BRANCH

Subject:— Opinions under the Bombay District Municipal Act, 1901

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File No. O. Munis Dist./50.

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C O N T E N T S.

Legal Department File No. O.Munis/Distt/50

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L.D.R. I No. 12850 dt-/26-7-50

Submitted with reference to the note of L.S.G. & P.H. Department at p. 11 ante.

The facts of the case may be summarised as under:-

The quadrennial revision of the assessment list regarding taxes on buildings and lands of the Gadag-Betgeri Municipality fell due in 1949-50, but the revised assessment list was not completed before the commencement of the financial year, i.e. the 1st of April 1950 and consequently the revised assessment could not be enforced at the commencement of the financial year.

The question referred to the R.L.A. for his opinion is whether the assessment list can be prepared and completed after the 1st of April 1950 during the current year and the formalities regarding its publication and inviting of objections from the house owners etc., can be gone through and tax revised can be legally recovered from the house-owners accoreing to the revised assessment list, which is still under preparation.

Mjr/24/8/
4 Cs.

Office of the R.L.A.

Bombay District Municipal Act, 1901. Section 65(4) public notice of Assessment section 46, under-House Tax -rules - assessment List.

The view taken by the Commissioner, Southern Division is correct. The point is fully covered by the ruling in Ambalal Sarabhai v Ahmedabad Municipality (23 B.L.R. 40) In view of the express provisions in rules 5 and 8 of the Revised House Tax Rules of the Gadg-Bettigeri Municipality that the assessment list shall be published before the 1st of March every year and the bills on account of the tax shall be served on the owners at the commencement of each financial year, the R.L.A's opinion No. 133 Confl., dated 5-8 1939 and the Advocate General's opinion dated 13-8-1939 would not be applicable

Sd/- P.M.Lad

o.c. 18/9

Remembrancerof Legal Affairs.

U.R. to L.S.G. & P.H.B. No. 13372, dated the 20th September 1950.

Mjr/24/8/

4 Cs.

Office of the R.L.A.

Section 56 clause (KK-1) of the Bombay District Municipal Act, 1901 provides for the expenditure of the municipal fund on any measure promoting the well-being of the Municipal employees. This provision is very wide Any financial help to relieve the indebtedness of the municipal employees may be deemed to be a measure promoting the well-being of the Municipal employees within the meaning of this provision. Consequently, the resolution of the Bombay Municipality to grant a loan of Rs. 1000/- without interest and Rs. 4000/- at 3% interest for 5 years to the Sarvodaya Sahakari Mandali of Harijan Employees of the Municipality, to enable them to repay their debts immediately, would fall within the plenitude of section 56 clause (KK-1) and it would be permissible for that Municipality to make such a loan.

Sd/- P.H.Lad

O.C. 18/11

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 16245, dated the 20th November 1950.

Mjr/24/8/

4 Cs.

L.DR.No 2729/52

The facts are these:-

The Municipality of Panchagani levied House Tax and conservancy cess as per its rules in that behalf on a property known as "Gulshan-E-Aram" at Panchgani which is managed by the local Zoroastrain League. On receipt of a bill for the payment of these taxes the League filed an appeal under section 86 of the District Municipality Act , but it was dismissed. The leag then filed a civil suit No. 600/44 in the Court of the Civil Judge (Jr. Dn) Wai, for a declaration and injunction against the Municipality but it was dismissed also. The League preferred in appeal to the Distt. Court at Satara and it was decided in favour of League, the Court holding that the property in question being exclusively devoted to charitable purposes was exempted from the taxes under the municipal rules. The question as to whether the Municipality should go in appeal to the High Court against the decision of the Asstt. Judge in appeal was brough t before the Municipal Board in its meeting held on 16-2-49. The proposition to file t the appeal was lost by a bare majority. Mr. S.M. Bhatha, one of the Councillors who had opposed the above proposal happens also to be the Vice President of the Zoroastrain League and as such the figured as the palintiff on behalf of the League in the said Civil Suit and as appellant in the appeal against the decision therein. That being so, the Collr. held him to be disqualified under sect. 15(2) of the Distt. Municipal Act to vote on the resolution for filing the appeal to the High Court and hence he suspended the execution of the resolution negativing the filing of an appeal to the High Court in t

..er . His action has been duly confirmed
by the Commr. C.D.

Thereafter the President of the Municipality issued a circular motion on 1-4-49 to all the Councillors to sanction the necessary expenditure for filling an appeal. On this motion too Mr. Batha recorded an adverse vote. But for his vote, there was an equality of votes for and against the proposition of filing of the appeal and expenses therefore. The President therefore exercised his cast vote and the motion was therefore held to be carried. When Mr. Batha was asked to sign the Vakalathnama in execution of the decision to file an appeal, he refused to do so although the Municipal rules required him to do so in his capacity as a Vice. President of the Municipality. The Collr. therefore issued a notice to Mr. Batha calling upon him to show cause why he should not be proceeded against under section 15(2) of the District Municipal Act.

Mr. Batha has replied to the notice through his attorney -at-law. The sum and substance of his reply is that he has no beneficial, pecuniary, material or professional interest or share of any kind in Zorostrain League at Panchgani and that therefore his figuring as party.plaintiff in the suit on behalf of the league against the Municipality of which also he happened to be the Vice President, cannot be taken to disqualify him under section 15(2) of the Distt. Municipal Act to vote as a councillor against filling an appeal to the High Court

The question for consideration are:-

(i) whether by reason of his being party plaintiff in the suit instituted against the municipality, Mr. Batha was within his rights or was debarred from voting against the motion for an appeal to the H.C. against the decision of the Asstt. Judge, Satara.

(ii) Whether the resolution passed by the Panchgani municipality opposing the motion for filing an appeal to the H.C.,,can be construed as a resolution not to file an appeal.

(iii) whether the action taken by the Collr. in suspending the resolution of the Municipality not to file an appeal can be construed as bringing into existence in a positive direction in compliance with which Mr. Batha was required to act.

(iv) whether in view of the contentions raised by the attorneys of Batha the notice issued by the Collr. should be withdrawn.

Mjr/24/8/

4 Cs.

Office of the R.L.A.

The Bombay District Municipal Act, 1901 Sections 15(2) and 16.

It is true that Mr. Batha voted on the proposition adversely but this fact alone would involve no disability under section 15(2) of the Bombay District Municipal Act, 1901, for his interest in the subject-matter of litigation would not be of the kind mentioned in caluse (b) of section 15(2) . Consequently, Mr. Batha is not disqualified to be a councillor. However, it is admitted that as Vice President of the Zoroastrian League he had filed the suit as plaintiff against the Municipality..It is, therefore, appearent that there was a conflict between his interest as Vice President of the Zoroastrian League and his duty to the Municipality as councillor. Consequently, he should not have taken part in the proceedings nor should he have voted on the resolution, particularly when the legal position was duly brought to his notice and his voting had made it a tie. His action in voting adversely on the proposition may, therefore, amount to misconduct within the meaning of section 16. It is, however, for the administrative Department to decide whether it is expedient to proceed under that section.

Sd/- D.M.Lad

O.C. 11/3

Remembrancer of Legal Affairs.

U.R. to L.S.G. and G.H.D., No. 3443, dated the 13th March 1950.

Mjr/24/8/

4 Cs.

L.D.RIT No. 3663661 / dt. 2.3.50

Submitted.

The facts of the case in brief are as follows:

The Commr., C.D. Poona appointed one Mr. R,D. Pathak under notfn. No E.S.T. 1/222 dt-4-10-48 for revising the assessment lists of Municipalities in West Khandesh Dist. accordingly he did the work of revising the assessment list of Nandurbar Municipality. Thereafrer, the Commr., C.D. appointed one Mr. S.B. Marathe under notfn. No E.S.T. 1/222, dt. 12-3-49 as an officer for hearing objections to the revised assessment list. Both these officers have completed their work and the assessment list has become conclusive under sec.65(6)(b)(of the Bom Dist. Municipal Act, 1901.

The residents of Nandurbar complain that the assessment list made by Mr. Pathak is illegal on the fol. grounds viz.

(1) the municipality has not passed a resolution conferring the powers under sec. 63(2) of Bom. Dist. Municipal Act to Mr. Pathak.

(2) Notices under secs. 64 and 65 of the Bom. Dist. Municipal Act were issued by Mr. Pathak and not by the municipality.

(3) the revision was unjustifiable as the rents had in no way increased.

(4) appointment of Mr. Marathe was also illegal as no resolution to that effect was passed by the Municipality.

The D.G.I., W.K., who was consulted in the matter is of the opinion that in the absence of the specific appointment of Mr. Pathak by the Nandurbar Muncy. under sec. 63(2) of the Dist. Municipal Act ' or the delegation of powers and functions of the managing committee to Mr. Marathe, the procedure of revision of assessment has become defective and the assessment is likely to be challenged as

invalid.

The question for R.L.A's consideration is whether the illegality committed by the Municipality could be cured if the Municipality subsequently passes a resolution of the general body, according its approval to the assessment list finally prepared by the Assessment Mamlatdar.

Mjr/24/8/

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Office of the R.L.A.

Bombay District Municipal Act, 1901 Sects. 63(2), 64 and 65.

The view taken by the District Government Pleader, West Khandesh, is correct. No resolution of the Municipality approving the appointment of Mr. Pathak and the assessment list would cure the illegality.

Sd/- P.M.Lad

O.C. 13/3

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D, No 3551,

dated the 14th March 1950.

Mjr /24/8/

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Office of the R.L.A.

What is known as balck-marketing would become punishable under the Essential Supplies (Temporary Powers) Act, 1946, or the Bombay Essential Commodities and Cattle(Control) Act, 1946. The offences under these enactments are punishable for a term exceeding six months, and persons convicted of such offences would, so long as the sentence has not expired, be disabled from becoming or continuting to be members of any municipality, local board, village panchayat or school board. The view taken in L.S.G. & P.H. Deptt. note is correct.

Sd/- P.M.Lad

O.C.

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.Deptt. No 5905, dated 1st April 1950.

Mjr/24/8/

4 Cs.

Legal Department.
R.9.No. 7157/50

In G.R. H. & L.G. Deptt. No. 7191 dt. 3-1-49, Government has directed that a member of a local body taken up in Government service shall resign his membership of that body within a week of taking charge of his post, failing which his services would be dispensed with. The Collector of Mehsana States that in pursuance of the said G.R. on his appointment as sub-police Prosecutor, the President of the Mehsana Municipality tendered resignation of his membership and Presidentship of the said Municipality. Similarly two officials who were nominated as members of Dhinoj Municipality under the Baroda Municipal Acts have also tendered resignation of their membership.

The question raised for R.L.A's consideration is whether the Government Officers nominated as members of the municipalities under the Baroda Municipal Acts can continue in office or should resign their membership in pursuance of G.R. H. & L.G.Deptt. No. 7191 dt. 3-1-1949

Office of the R.L.A.

...a State (Application of Laws) Order, 1949, para. 6.

Bombay District Municipal Act, 1901.

Shri P.K. Pradhan was first the elected President of the Mehsana Municipality. As he was subsequently taken up in Government service as Sub-Police.Prosecutor, his case was covered by G.R., H. & L.G.D. No. 7191, dated 3rd January 1949, and he was, therefore, bound to resign his membership.

The position is different as regards the State Government servants nominated as members of a municipality by the Baroda Government in pursuance of specific provision made in that behalf under A Class Municipal Act I of Samvat 1962 and B Class Municipal Act No. 32 of Samvat 1983. Though the said Acts are repealed by A Class Municipal Act No. 12 of 1949 and B Class Municipal Act 14 of 1949, respectively, they contain a saving caluse to the effect that the Municipality already constituted shall be deemed to have been constituted under this Act, and by virtue of para. 6(1) of the Baroda State (Application of Laws) Order, 1949, such municipalities are deemed to have been constituted under the Bombay District Municipal Act, 1901. As the Sub-Assistant Surgeon and the Police Patel were nominated by Baroda Government as members of the Chinoj Municipality in virtue of their official position, they would continue to be the members of the same until the term of the Municipality expires; Government cannot by executive order curtail the staturory period of their office. G.R.m.H . & L.G.D. No. 7191, dated 3rd January 1949 does not contemplate such official nominated members to resign their membership

Sd/- P.M.Lad

O.C. 17/5

Remembrancer of Legal Affairs.

U.O. to L.S.G. & P.H.D. No. 6782, dated the 18th May 1950

. 107-109 of file No.6262/33

In the printed Land Alienation Register the village of Sankeshwar is shown as personal Inam Class II continuable in prepetuity to Shri Narasiha Bharati Swami Sankeshwar and his successors in the Math so long the Jahagirs attached to the Sanathan are permitted to exist etc. A village Panchayat was established at Sankeshwar in 1922. The village panchayat Committee resolved that as the twon was of growing importance. a Municipality should be established at Sankeshwar. The Collector, of Belgaum and the Commissioner S.D. supported the

P. 29 do

proposal. Govt. accordingly proposed to abolish the village panchayat and to convert the local area into a Municipality, In exercise of power conferred by sub.sect.(1) of sect. 3 of the Bom.

vide p. 25 do.

Dist. Municipal Act, 1901, Govt. caused to be published a proclamation announcing that it is proposed to constitute the local area of Sankeshwar village a permanent Municipal district under sects. 4 & 7

p. 42 do

of the Act (Vide H & L.G.D. Notifn. No 6262/33 dated 17-6-49). The Karbhari of the math (Sans-

p. 51-65 do.

than) and some others have submitted their objections against the proposal. The Karbhari contends that Sankeshwar is an alienated village and that SWami

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being the grantee of the soil the constitution of the Municipality would interfere with the rights of the Inamdar He also contends that before issuing of the notifn, the consent of the Inamdar being the grantee of the Soil, should have been obtained. The

). 51-52 and 111 do.

Collr. considers that these objections are unfounded. A list of properties belonging to Govt. will found at page 99.

7-9- ante.

The questions for R.L.A's consideration are:-

(1) whether it is permissible for Govt. to establish a Municipality at Sankeshwar which is a personal Inam; and.

(2) Whether the buildings which specifically

-st in the State Govt. or Central Govt. should be specifically reserved under sect. 50(2) of the Bom. Dist. Municipal Act.)

Office of the R.L.A.

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As regards the first question, attention of the L.S.G. and P.H. Department is invited to R,L.A's opinion No. 5246, dated 22nd May 1947, in which that Department was advised that there was no objection to Walchandnagar, though a private estate, being incorported into a Municipal District under the Bombay District Municipal Act, 1901. Open land-s being part of the Inam village, would be in possession of the Inamdar as his private lands. Roads would also belong to the Inamdar subject to the rights of the public to pass and repass over them (See 43 Bom. L.R. p. 167).

2. In view of the provisions of section 50)2) of the Act, the properties mentioned in tiems Nos. (1) to (10) of the list of public properties including the Post and Telegraph Office would, if not specially reserved by the State Government , vest in and belong to the Municipality proposed to be constituted for the local area. It is, therefore, necessary to reserve to Government all the public properties mentioned in the List.

Sd/- P.M.Lad

o.c. 10/5

Remembrancerof Legal Affairs.

U.R. to L.S.G. and P.H.D., No. 6487, dated the 12th May 1950.

Mjr/24/8/

4 Cs.

Rebate on taxes Sec. 69 of the Bombay District Municipal Act, 1901. Rules 213 of the Kapadwanj Municipality.

Rule 213A framed by the Kapadwanj Municipality provide that every tax-payer paying his taxes specified in Schedule E on or before 31st July of every year shall be given a rebate at Rs.1-9-0 per Rs. 100/- i.e. at the rate of three pies per rupee. This rule is made apparently in exercise of the powers given by caluse (i) of section 46 of the Bombay District Municipal Act, 1901, which inter alia gives power of prescribing the grounds on which exemptions are to be recognised, the conditions on which and the extent to which remissions may be granted, and the system on which refunds are to be allowed or paid in respect of such taxes. The only part of the clause to which the rule can be referred is that which speaks of the conditions on which and the extent to which remissions may be granted, on the assumption that the proposed rebate is of the nature of a remission, based on the condition of making payment on or before 31st July. Moreover, section 46 requires that the rules must not be "inconsistent with this Act," and clause (i) requires that what is prescribed thereunder must be "subject to the provisions of Chapter VII". Section 69, which is included in Chapter VII, provides for remission or refund of a portion of the rate when any building or land is vacant and unproductive of rent for the period mentioned in sub-section (1) or (2), as the case may be. It is, therefore, clear that under section 46(1) the rules providing for remission or refund of house-tax can be made only in respect of buildings which are vacant and unproductive of rent as contemplated by Sub-sections (1) and (2) of section 69. The rebate cannot be treated as an exemption, and viewed as a remission, the proposed rule would conflict with the provisions of section 69(1) and (2) and rules 214 to 219.

Even under section 165(1) of the District Municipal Act, the power of the Municipality to compound or compromise is

restricted and is confined to any suit instituted by or against it, or in respect of any claim or demand drising out of any contract entered into by the Municipality under the Act. The levy and collection of taxes is an in-extinguishable and unabatable right, and usually such a calim urged either by the State or by a Municipal Corporation cannot be compromised. Any agreement or contract effecting such a result is incapable of enforcement (see page 276 of Aiyangar's Law of Municipal Corporation). The power to impose a tax is not contractual and needs no co-relative right. When a public body is entrusted by the Legislative with a duty of making public improvements and powers are entrusted to it for such purposes, those powers will not be subject to a restrictive construction, though they may interfere with private rights. (page 281 Ibid). As power to impose a tax is not contractual, it would not be legally competent for the Municipality to compromise any calim in respect of the taxes by way of granting remission or rebate to those tax-payers who pay the tax on or before 31st July.

The proposed rule 213A is intended to apply to taxes specified in Schedule E; and that Schedule contains the following taxes, namely:-

(1) House-tax and shop-tax,

(2) Conveyance tax,

(3) & (4) Special and general sanitary cess,

(5) Toll-tax,

(6) Public water supply rate,

(7) Private water supply rate,

(8) Drainage tax.

It is not quite clear as to what the Municipality means when in its letter No. M.B.-33/204 dated 16-6-1949 addressed to the Collector it states that every tax-payer pays his taxes between the months of August and November. In so far as the proposed rule is intended to apply to recovery of tolls, if at all they continue to be levied, it is clearly ultra vires being inconsistent with the provisions of Chapter VII. Even in respect of other taxes, the provedure for recocery as

contained in Chapter VIII is being followed, provides that when the amount shall have become due, the Municipality shall with the least practicable delay cause the bill to be presented to the person liable for the payment thereof. If the sum is not paid within fifteen days of such presentation, a notice is to be issued (see section 82); and if the sum demanded is not paid within fifteen days from the service of such notice a distress warrant can be issued under section 83. The house-tax and shop-tax become payable on 1st April and there is no reason why arrangements should not be made to set in motion immediately the procedure for recovery of the tax. A Municipality cannot be allowed to place a premium on its own delay in collecting the taxes and on the ground of such delay to grant remission for prompt payment to the general detriment of its revenue. The liability to pay the tax arises only when a bill is presented under section 82(1). The proposed rule would create complications in respect of the right of appeal under section 86 or the right to show cause. Moreover, the rule in effect means that no notice of demand should be issued till 31st July or even if the notice and distress warrant are issued, the assessee will be entitled to the rebate so long as he makes the payment before 31st July, In the latter case rebate will be inconsistent with the procedure for recovery contained in Chapter VIII .

For all the above mentioned reasons I am ofopinion that the proposed rule 213A is neither legal nor expedien

Sd/- P.M.Lad
27/3
O.C. Remembrancer of Legal Affairs.

U.R. to L.S.C. & T.H.D. No 4294 dated the 29th March 1950

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4 Ts.

p. 33 ante.

The facts are stated in letter from the Administrator of Baria, No.27 dt-26-8-48. By Revenue Order No. 447 dated 27-1-1915 Devgadh Baria Muny. was constituted. The said order provides for the division of the town into six wards, each ward electing one member. It provides for the qualifications and disabilities of voters, and also about the powers and duties to be performed by the said Muny. Under caluse 11 the Municipality consisted of 12 members, six elected and six nominated by the Darbar. Under certain circumstances, however, the Darbar reserved to itself the right to constitute the Municipality wholly of nominated members. As the election proved abortive, on 24-8-1916 Govt. constituted the Municipality of 12 mominated members. As, the Board so constituted made default in carrying on the Municipal administration, it was superseded and the municipal administration was taken over by the Darbar under its order 5-4-1918, and a Secretary was appointed to carry out the orders of Govt.

pp. 3-19- ante.

P. 15 do

Vide p. 21 do.

The L.S.G. and P.H. Deptt. concurs in the view expressed by the Commr. N.D. and considers that in pursuance of para 6 of the Indian States (Application of Laws) Order, 1948, the order issued by the Darbar superseding the Municipality would remain in force and consequently, the Commr. can appoint an Administrator for the Municipality under sect. 179 (3)(b) of the Dist. Municipal Act, 1901. R.L.A. is requested to advise whether the view expressed by that Deptt. is correct.

p. 59 ante.

pp. 69-70 do.

Office of the R.L.A.

Seen and returned .

2. The view expressed by the Local Self Government and Public Health Department in its note dated 19-4-1950 is correct.

Sd/- P.M.Lad

o.c. 9/5

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D., No. 6398A dated the 10th May 1950.

Mjr/24/8/

4 Cs.

R.I. No. 11134 dt- 30-6-1950

Submitted.

2. It appears that for allegedly abusing and even threatening to beat some of the Councillors and the President of Dharangaon Municipality by one Shri Fundansing a Councillor of the Municipality in the meeting of the Managing Committee held on 2-9-1947, the Municipality by its Resolution dated 19-9-1947 recommended to the Commissioner, C.D. that the said Councillor be removed for his disgraceful conduct, Under sect.16 of the Bom. Distt. Municipal Act, 1910 1901. After a show cause notice issued by the Commr. C.D. further action was stayed, since Shri Fundansing had replied that he had instituted criminal proceedings against certain councillors in this matter, and it was on 19-5-1950 that the Commr. C.D. by his order under sect. 16 directed that the said Fundansingh be removed from the Dharangaon Municipal Council. In the meantime fresh elections of the Municipality were held and a new Board assumed office after 15-10-1948. Shri Fundanmal was re-elected as a Councillor. The question for R.L.A's consideration is whether Fundansingh could be legally removed by the Commr. by his Order dated 19-5-50 for 'disgraceful conduct" in his previous term without a resh recommendation to that effect by the new Municipal Board.

Mjr/24/8/

4 Cs.

Office .

Bombay District Municipal Act, 1901, sections 16 and 18.

Attention is invited to the R.L.A's opinion No. 33-Confl. dated 25th August 1919, where he opined:

> " The application of section 16 of the Bombay District Municipal Act is not sepcifically limited to misconduct committed during the term in which the question of removal arises. Had such been the intention, the word 'is' would probably have been used instead of the words 'has been'. It would not be reasonable to hold that if misconduct committed in a previous term were discovered in a subsequent term, the operation of section 16 would be barred.".

It would, therefore, be clear that the removal of Shri Fundansing as councillor of the Municipality would be competent under section 16 for his misconduct or disgraceful conduct committed during the term of the outgoin Municipality. However, what is essential for removal under section 16 is (1) the recommendation of the Municipality for removal and (2) the Commissioner's view that removal is a fit action. It is apparent that the recommendation of the Municipality is a condition precede to the Commissioner taking action against the councillor for removal. It is no doubt true that in the present case the previous Municipality did pass a resolution recommending the removal of Shri Fundansing as councillor of the Municipality but no action was taken before the term of that Municipality expired. The new Municipality has revoked the recommendation made by the previous Municipality even before the Commissioner decided to take action with the result that at the time when the Commissioner proposed to take action there was no recommendation of the Municipality for the removal of Shri Fundansing Consequently, no action under section 16 could be taken by the Commissioner for the removal of Shri Fundansing. The order passed by the Commissioner being obviously opposed to section16, may be set aside by Government in exercise of the powers vested under section 180 .

Sd/- P.M.Lad

O.C. 7/7/

Remembrancer of Legal Affairs.

U.M. to L.S.G. & P.H.D. No. 9506 dated the 7th July1c

Office of the R.L.A.

Bombay District Municipal Act, 1901 sec.s 40(2), 90(1) & 178

Lease of street land by Dohad Municipality.

The view taken by the Secretary, L.S.G. & P.H.D. is correct . Under section 40(2) read with section 90(1) of the Bombay District Municipal Act, 1901, the municipality is not competent to lease out any portion of the street land without the sanction of the commissioner, the period of lease being immaterial. The Dohad Municipality has leased out part of the public street land for vegetable stalls without the permission of the Commissioner..The lease, is, therefore, invalid and the persons in possession of the land are treaspassess. The lease being in definance of the orders of the Commissioner, the Municipality is guilty of wilful disobedience not only of the orders of the Commissioner, but also of the imperative provisions of the Bom bay District Municipal Act. The Municipality appears to be relying on Rule 199 of the Dohad Municipal Rules, but that rule is framed under section 46(1) and will have no application to the lease of lands. Since the Municipality itself has wilfully leased out the land, there is no possibility of its taking action for the eviction of the stall-holders. In the circumstances, there appears no legal objection to taking action under section 178.

Sd/- P.B.Lad
28/7/
Remembrancer of Legal Affairs

o.c.

U.R. to L.S.G. & P.H.D. No. 10741 dated the 29th July 1950

Mjr/24/8/

4 Cs.

R.I.No. 9300 date/1-6-50

Prior to the integration of the Idar State with the State of Bombay, there were three Municipalities constituted under the Idar State Municipal Act and functioning at Himmatnagar, Idar and Vadali. The Collr. of Sabarkantha States that under the Idar State Municipal Act, the mamlatdars of Himmatnagar, Idar and Vadali were ex-officio Presidents of the Municipalities concerned, and that practice has been continued even after the application of the Bom. District Municipal Act, 1901. The Collr, however, requests that Govt. may accord their approval under Sect. 23(2) (b) of the Bom. District Municipal Act, to allowing the mamlatdars of Himmatnagar, Idar and Vadali respectively to continue to work as ex-officio Presidents of the respective Municipalities from the date of their taking over the charge. The papers are referred to R.L.A. for advice.

Mjr/24/8/

4 Cs.

Office of the R.L.A.

Indian States (Application of Laws) Order, 1948 para 6
Bombay District Municipal Act. clause 'b) section 23(2)

By virtue of para. 6 of the Indian States (Application of Laws) Order, 1948, the Municipalities at Himmatnagar, Idar and Vadali constituted under the Idar State Municipal Act, would be deemed to be constituted under the Bombay District Municipal Act, 1901. Presumably the Idar Municipality Act empowered the State to nominate members and Government officials The mamlatdars of Himmatnagar, Idar and Vadali notified as ex-offico Presidents by the Idar State would, by virtue of para 6 of the Indian States (Application of Laws) Order, 1948, be deemed to be ex-officio Presidents under caluse (b) of section 23(2) of the Bombay District Municipal Act. Consequently, during the life of the said Municipalities, the mamlatdars of Himmatnagar, Idar and Vadali would continue to function as ex-officio Presidents and no specific orders of Government would appear to be necessary

Sd/- P.M.Lad
o.c. 8/6

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 7803

Dated the 8th June 1950.

Mjr/24/8/

4 Cs.

L.D
1078-A-dt-23-6-50
1-47

Office of the R.L.A.

As I under stand the facts appear to be as follows. Originally a body consisting mainly of officials was constituted as a Municipality under an order of the State. Subsequently, that body was replaced by an elected body regarding which some provisions were made in the Constitution Act of the State. The Constitution Act was naturally repealed before the merger, and on the understanding that along with that repeal, the elected body had no legal existenmnce, that body was dissolved. It may be that that understanding was mistaken. However, the fact remains that after dissolving the elected body the State reverted to the former official constitution of the Municipality. It is that official body constituted as a Municipality which was in existence when the State merged. Under paragraph 6 of the Indian States (Application of Laws) order, 1948, this local authority with an official constitution is deemed to have been constituted under the corresponding enactment, nemely, the Bombay District Municipal Act, 1901, extended to the State concerned.

2. Two alternative courses are now left open to Government, namely, supersession or dissolution under section 179 of the District Municipal Act. Dissolution is apparently not deemed expedient because of the difficulty of holding fresh elections. A Municipality can be superseded if in the opinion of the Provincial Government it is not competent to perform the duties imposed upon it by or under this Act or otherwise by law. Incompetence does not necessarily mean the unfitness of the councillors to perform their duties. By incompetent" we mean both not qualified as well as not able to do a particular thing. It now transpires that the official constitution would be unworkable in practice. I do not understand how the Sar Nyayadhish

is really continued; for no such post is now known to Bombay laws. In any case the report by the Sar Nyayadhish shows that it is impossible to conduct the affairs of the Municipality with this peculiar constitution manned by non-qualified persons unable to cope with their duties. That being the position Government would be justified in superseding the Municipality under section 179. (Compare R.L.A's opinion No. 4026 dated 29th May 1946).

Sd/- P.M.Lad

o.c. 26/6

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.Deptt. No.8803, dated the 27th June 1950.

Mjr/24/8/

4 Cs.

Bombay District Municipal Act, 1901 sec. 11(1)(c).

Elections to Deesa Municipality.

It appears that the Collector of Banas Kuntha by a notice dated 20th April 1950 fixed the programe for the general election to the Deesa Municipality, Banas Kantha District. According to the programe, the date for submitting nomination papers was fixed for 1st may 1950, that for scrutiny of nomination papers for 4th May 1950 and tha for recording of votes for 20th May 1950. The candidates for the uncontested seats were declared elected on 18th May 1950 and their names were published in the Bombay Government Gazette. on 1st June 1950; and the councillors for the contested seats were declared elected on 25th May 1950 and their names also were published in the Bomvay Government. Gazette on 22nd June 1950. The general election was held on the basis of the old constitution of the Deesa Municipality losing sight of the fact that in the meantime the Bombay Local Authorities Adult Franchise and Removal of Reservation of Seats Act, 1950, came into operation on 2nd May 1950. The question raised for the R.L.A's consideration is whether in view of the fact that there was no revision of the constitution of the Municipality in accordance with the Bombay Local Authorities Adult Franchise and Removal of Reservation of Seats Act, 1950, the elections held for the Deesa Municipality are invalid and, if so, whether Government can rectify it.

By section 2 of the Bombay Local Authorities Adult Franchise and Removal of Reservation of Seats Act, 1950. the reservation of seats for Muslims, Harijans, Backward Tribes, Indian Christians and Anglo-Indians was abolished and the reservation for Scheduled Castes and Scheduled Tribes was substituted with the result that new rules were required to be framed by Government under section 11(1)(c) of the Bombay District Municipal Act, 1901, prescribing the number of seats to be reserved for these classes and revising the constitution of the Municipality in accordance with it. Ordinarily, unless such rules were framed it was not

legally

possible to hold the general election to the Deesa Municipality on the basis of the old rules prescribing the constitution since the Bombay Local Authorities Adult Franchise and Removal of Reservation of Seats Act,1950 had come into operation on 2nd May 1950. But there is no provision in that Act for power to countermand the pending elections on the basis of the old constitutions. In the absence of such a provision, the principle underlying section 7 of the Bombay General Clauses Act, 1904, may apply. In the present case by the time the new Act came into operation, nomination papers were already submitted with the result that the opening phases of the election had already been complete and the election itself was well under way. The candidates who had already submitted their nominations had become entitled to certain rights; for in the case of uncontested seats they would be entitled to be declared elected. In accordance with the principle underlying section 7 of the General Caluses Act, anything duly done under the old Act is preserved and is not affected by the new Act. As stated above, the first stages of t the election being complete the further stages of polling etc. would in no way be affected by the new Act. In the circumstances, it appears possible to hold that the general election held for the Deesa Municipality under the old constitution is valid. At any rate, there is no provision in Bombay District Municipal Act empowering Government to set aside an election however invalid it may be. The councillors have been declared elected and they cannot be unseated except by a petition to the court as prescribed in the Act. In the circumstances, the councillors may be allowed to continue to hold their office unless and until their election is challenged in a court of law and they are unseated.

Sd/- P.M.Lad

O.C. 24/7

Remembrancer of Legal Affairs.

J.R. to L.S.G. & P.H.D. No.10495, dated the 25th July(50.

Office of the R.L. A.

Bombay District Municipal Act, 1901

Sections 59(1) and 127(1)

Levy of non-privy cess.

Nothing is known about the incidence of the non-privy cess. If the cess is intended to cover the expenses of removing the refuse from places other than the private and public latrines, it would not be warranted by section 59(1) of the Bombay District Municipal Act, 1901, for depositing refuse in such places would be a nuisance punishable under section 127(1) and if cess is levied the nuisance would be deemed to be condoned which would be contrary to section 127(1).

Sd/- P.H.Lad

O.C. 25/8/

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 12206, dated 26th August 1950.

Mjr/24/8/

4 Cs.

R.I.No. 15934 dt. 26-8-50

Submitted

2. By a proclamation dated the 13th April 1950 issued under sub-section (1) of sec. 8 of the Bombay District Municipal Act, 1901, Government have announced their proposal to declare that the local area included within the municipal limits of Kamdolli in the Kundgol Mahal of the Dhawarar district shall cease to be a municipal district. Collector of Dharwar has suggested that a village panchayat should be established in place of the Municipality The Comm S.D.has improved on this suggestion and has proposed that abolition of the municipality may take effect from the date on which the village panchayat committee actually comes into existence, so that the property and funds of the municipality can be transferred to the village Panchayat Committee, direct. The L.S.G. and P.H.D. proposes to issue first, a notification under sec. 4(1) of the Bombay Village Panchayats Act, 1933 declaring the Kamdolli Municipal areas as a "Village" so that in the meantime the village Panchaya can be constituted, and thereafter to issue the notification under section 4(1) of the Bom. Dist. Municipal Act inchronising with the actual coming into office of the Village Panchayat Committee. The R.L.A. is requested to advise whether the course proposed in the L.S.G. and P.H.D. Office note, is legally feasible.

Mjr/25/8/

4 Cs.

Office of the R.L.A.

Bombay District Municipal Act, 1901
section 4(4)
Kamdolli Municipality-
proposal to constitute-
village Panchayat.

The proposal at A on p. 37 of L.S.G. & P.H.D. office note would not be legally feasible, for unless the municipal area is denotified under section 4(4) of the Bombay District Municipal Act no notification under section 4 of the Bombay Village Panchayats Act, 1933, can be issued constituting it into a village.

Sd/- P.M.Lad

o.c. 2/9/

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 12634, dated the 4th September 1950.

Mjr/25/8/
4 Cs.

Submitted.

2. The triennial election of the Pachora Municipality were held on 27-2-1950. Under rules 12 and 26 of the Pachara Municipal Election Rules a Special General Meeting of the Municipality was held on 28-2-1950 for counting of votes and declaration of results. The counting resulted in one Tayaballi Kurbanalli securing highest number of votes in two wards. Under rule 29, the said Tayaballi had the option of as to which of the wards he should be returned as a member. He communicated his decision to the President of the Municipality by Telegram but it appears the telegram was not received by the Chairman of the meeting of the 28th February 1950. In view of rule 33 the chairman though the he had no option but to declare the results of the ellections at the same meeting, and he declared Tayaballi as ellected to both the wards. This has adversely affected the other candidates and one Kadu Gulabsehet, who secured the second highest number of votes, has filed an ellection petition under sec. 22 of the Bam. Dist. Munis Act, 1901, in the Court of the Dist. Judge, East Khandesh .

The Collr. East Khandesh considers that although under rule 29 the option given to the person in absence of any time limit in this behalf must be exercised by him after the counting of votes and before special g general meeting is over, some reasonable time much be allowed in this behalf; it would not warrant the interpre etation put by the Municipality. The Commr., however considers that the time limit would be immediately after the counting of votes, i.e. on the very day and never on the next day or afterthe holding of the special general meeting.

The L.S.G. and P.H.D. consider that in view of rule 33 the action of the chairman was not illegal and that, since in all fairness some reasonable time must be allowed to the person exercising, the option under rule 20, the rule would have to be amended. The R.L.A. is requested to advise in the matter.

Mjr/25/8/

4 Cs.

Office of the R.L.A.

Pachora Municipality Elections Rules - Election of a candidate in two wards.

The view taken by Secretary Local self Government and Public Health Department is correct. The Pachora Municipal Election Rules may be amended as proposed by him

Sd/- P.M.Lad
11/8/

o.c.

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 11506
dated the 12th August 1950.

Mjr/25/8/
4 Cs.

Legal Department.

The total number of Seats allotted to the Bhadran Municipality is 15 out of whom 5 Councillors, one being nominated, have resigned. The President of the Bhadran Municipality proposes that the vacancies should be filled up while the commr., N.D. for the reasons stated by him considers that they should not be filled up A. the term of the existing Board is due to expire on 31-1-1951, the U.S. L.S.G. and P.H.D. requests R.L.A's advise whether under sect. 18 of the Bombay District Municipal Act, 1901, it is legally proper to ask the Commr. not to take steps for filling the vacancies.

Mjr/

4 Cs.

Office of the R.L.A.

Section 18(1) of the Bombay District Municipal Act, 1910, no doubt expects that the vacancy shall be filled up, as soon as conveniently may be, by the election etc., of a person thereto who is to hold office so long only as the councillor in whose place he is elected would have held it if the vacancy had not occurred. Rule 3 of the Bombay District Municipal Election Rules, 1950, framed by Government provides that the Returning Officer shall, not less than four months prior to the date on which the term of office of the councillors is due to expire, prepare a list of voters. The term of the Municipality is likely to expire on 31-1-1951 and a new body is to be constituted under G.R.L.S.G. & P.H.D. No.6488/33, dated 26-8-1950, under rule 3. The expression "as soon as conveniently may be" does not necessarily mean forthwith or immediately but merely with all convenient speed. In view of the fact that the prepara-tion of the new list of voters is to be taken in hand almost immediately, and that the term of the body will expire by the end of January 1951, it is for the Administrative Department to consider whether the by-elections should at all be held; for, even if the by-elections are held, that will itself take some time, and the new councillors will hardly have a tenure of a month or so.

Sd/- P.M.Lad
O.C. 11/9/

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 12940, dated 11th September 1950

Mjr/25/8/

4 Cs.

L.D. R.I.No 17355/dt. 20-9-50

Submitted with reference to the note of the L.S.G. P.H.D. Department at p. 45 ante.

The question referred to the R.L.A. for his opinion is whether the Bassein Municipality is competent to recover the r vised tax although the list of assessment has not been prepared and completed before the official year i.e. 1-4-50) There is no specific provision in the Bombay District Municipal Act, 1901 in so many words that the assessment list must be revised and completed before the 1st of April each year but it is implied so by a necessary implication of law in view of the language used in sub-section 2 of the section 67 of the Act, which runs as under:-

"But the provisions of Sections 64, 65 and 66 shall be applicable every year, as if a new assessment list had been completed at the commencement of the year. The underlined words are legally significant, and show that a new assessment-list had to be completed before 1-4-1950 in the present case but does not appear to have been done so .

Section 65(6)(b)(ii) says that for the purposes of any tax imposed on buildings or lands, of the amount to each such tax leviable thereon through out the official year to which such list relates. These underlined words also land support to the view that the assessment list has to be completed before the official year.

According to the House Tax Rules framed by the Bassein Municipality under section 46(1) of the Act, the House Tax shall be payable on the 1st April in each year under Rule 169 at p. 42 ante slip marked "A".

The Collector Thana in his reply at p. 39 ante admits in general terms the accurancy of allegations made by the complainant at p. 11 ante- marked portion

"A". Among other things it is complained that under under section 65(1) of the Act, 1901, one month's notice at least as provided therein has not been given to the owners of the houses. This is a material irregularity and vitiates the revised assessment list. In this connection please see A.I.R. 1936 Sind 144. It will be no answer to the aggrieved assessee to tell him that he manu have his grievances redressed by an appeal under section 86 of the Act. He has a right to straight way go to the civil court without availing of the summary remedy of appeal provided in section 86 of the Act. Please see I.L.R. 27 Bom. 403 and 42 B.L.R. 223, in this connection.

In the House tax rules of the Bassein Municipality it is not stated in so many words that the assessment-list should be completed before the 1st of April in the official year, but the rule 169 read with section 67(2) of the Act in particular and section 64 and 65 of the Act/ in general accumulat/ very goes to show by a necessary inspection of Law that the assessment list has to be prepared and completed before the 1st of April in the financial year in terms of sections 63-64 and 65 of the Act, as the revised tax will be payable on 1-4-1950 23 B.L.R. 48 supports the above view notwithstanding the fact that in the case of the Bassein Municipality there are no House-tax Rules which lay down expressly that the assessment should be completed before the 1st April each year to be enforced on 1-4-1950. The previous opinion of the R.L.A. on a similar point is slip marked "B" in the file below.

Mjr/25/8/

4 Cs.

Office of the R.L.A.

The view taken by Local Self Government and Public Health Department is correct: see the Advocate General's opinion dated the 13th August 1939. The ruling in Ambalal Sarabhai V. Ahmedabad Municipality (23 B.L.R.48) will not apply to the present case.

Sd/- P.M.Lad

o.c. 26/9/

Remembrancer of Legal Affairs.

U-R-12 L.S.G.& P.H.D. No 13656 dt 27th Sept'50

Mjr/25/8/

4 Cs.

Office of the R.L.A.

Baroda A Class Municipal Act, 1949 section66(2)
Baroda State (Application of Laws) Order, 1949 Para. 5(iii).

It appears that by section 66(2) (ण) of the Baroda 'A' Class Municipal Act, 1949, Government was empowered to grant exemptions to any factory or manufactured goods from octroi duty, the object of such exemption being encouragement to commerce and industry. The Visanagar Municipality which was governed by that Act framed Rules for the levy of Octroi Duty and in Schedule II thereto it has been provided in item 7 that the goods which according to the orders passed by the Government are exempted from Octroi Duty shall be exempted from Octroi Duty. The Baroda Government by its order No. D. 56 /33, dated the 9th September 1948 exempted the Visanagar Metal Works from paying 60 per cent of the Octroi Duty levied by the Visanagar Municipality for a period of 5 years. The question raised for R.L.A's consideration is : Whether the exejption granted by the Baroda Government to the Visanagar Metal Works is still operative notwithstanding the repeal of the Baroda A Class Municipal Act and the application of the Bombay District Municipal Act, 1901, to the Visanagar Municipality.

2. Although section 66(2) (ण) of the Baroda 'A' Class Municipal Act, 1949, is no longer operative and although the Bombay District Municipal Act, 1901, contains no similar provision, still the Octroi Rules of the Visanagar Municipality are operative in view of section 180A inserted in the Bombay District Municipal Act, 1901 by Bom. IV of 1950. Item 7 in Schedule II to these Rules relating to exemption is relatiable to section 46(1) and section 60(a)(iii) of the Bombay District Municipal Act, 1901, and therefore it is operative and will continue to be operative until it is modified, maended or repealed. Consequently the exemption granted by the Baroda Government to the Visanagar Metal Works wouldbe covered by Item 7 in

Schedule II to the Visanagar Octroi Rules and the Municipality will have to continue the exemption until the ~~expiry~~ empiry of the period of 5 years, even if in t the meantime, the Municipality withdraws the exemption by amending or repealing Item 7 in the Schedule II to the Octroi Rules (see clause 5(iii) of the Baroda State (Application of Laws) Order, 1949.

Sd/- P.M.Lad

o.c. 22/9/

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 13567, dated the 25th September 1950.

Mjr/25/8/

4 Cs.

Directors of Local Authorities

Exercise of powers of Commissioner.

GOVERNMENT OF BOMBAY,
Local Self Government and Public Health Department,
RESOLUTION No, 6548/33,

Bombay Castle, 17th October 1950

Read: 1) Government Resolution, General Department No. 547/33, dated 30th August 1934.

2) Government Resolution, Geneeral Department, No. 7191, dated 17th June 1935, and Government Resolution, Health and Local Government Department, No. 7191, dated 10th February 1948.

RESOLUTION: Government is pleased to direct that after the abolition of the posts of Divisional Commissioners with effect from 15th August 1950, the reference to Commissioners of Divisions in Government Resolution, General Department, No. 547/33, dated 30th August 1934, Government Resolution, General Department, No 7191, dated 17th June 1935, and Government Resolution, Health and Local Government Department, No. 7191, dated 10th February 1948, should be deemed to mean references to the "Directors of Local Authorities."

2. Government is further pleased to direct that in all other orders of Government issued by this Department to local bodies whether the reference to the Commissioner of Division occurs it should be deemed to mean a reference to the Director of Local Authorities .

2.

By order of the Governor of Bombay,
B.J. JOSHI
UNDER SECRETARY TO GOVERNMENT.

To,
The Directors of Local Authorities,
All Collectors,
The Accountant General, Bombay,
The Finance Department,
The Several Departments of the Secretariat (except the Separate Department)..

that the present arrangement for the Collection of the duty may be continued till the Municipality frames rules and by-laws for the levy of octroi duty. Pending sanction of the rules, Govt. may transfer to the Municipality the amount of "Makat" duty recovered by Govt. after defraying the expenses incurred for its collection".

The Secy., L.S.G. and P.H.D., inter alia suggests that as the levy of "Makat" has gone on since the Peshwa without any protest, the P. & S.D. may not insist on its immediate discontinuance by Govt. The C.S. however, doubts whether it would be legal for Govt. to continue to levy "Makat". He considers that the correct thing would be to discontinue the levy of this tax forthwith and let the Municipality levy the octroi duty after observing the necessary formalities. R.L.A. is requested to advise whether the view of the C.S. is correct.

pp. 93-94 ante

p. 94 do.

Mjr/25/8/

Office of the R.L.A.

From the Collector's report of 16-4-1950 at pp. 87-88 ante it appears that no records were available to throw any light on the origin of the levy of 'Makat', but in all probability it was levied by the Cambay State somewhere prior to 31st October 1891. It may be fairly assumed that it was for the first time levied under the order of the Ruler which then had the effect of law. In any case every presumption must be m ade in favour of the validity of the levy which continued for more than half a century without any question or challenge. When in 1948 the Government of Bombay assumed jurisdiction over the Indian States including Cambay under the Extra-Provincial Jurisdiction Act, 1947, the Government made under section 4 of that Act an order called the Administration of the Indian States Order. Under para 7 of that Order all taxes, duties, casses or fees which immediately before 10-6-1948 (which was the appointed day in respect of the Gujarat States) were being levied by any competent authority under any law for the time being in force in any Indian State were continued to be levied. Prior to the merger of the Cambay State the Cambay Municipal Act, 1909, and the rules thereunder were in force in that State. As the Act and the Rules were not among the papers sent by the Department they were directly obtained from the Collector of Kaira. Section 55 of that Act empowered the Cambay Municipality to impose Jakat duty. The Municipality, however, levied this duty on articles other than eatables as will be seen from the printed Schedule (B) at pages 59 to 61 ante. On eatables the Government of Combay levied 'Makat' duty independently of the provisions of the Cambay Municipal Act, 1909. Para 7 of the next Order called the Indian States (Application of Laws) Order, 1948, which was made on 28-7-1948 has no application to the levy of Makat, for Makat was not levied any enactment in force in the Cambay State which

was repealed by the corresponding enactment extended to that State under paras 3 of the Order. Next in order came the States Merger (Governor's Provinces) Order, 1949 which was made by the Governor General under section 29/-A of the Government of India Act, 1935. Under para 4 of that Order all the laws in force in a merged State or in any part thereof, immediately before 1-8-1949 including orders made under section 3 or section 4 of the Extra Provincial Jurisdiction Act, 1947, were continued in force until repealed, modified or amended by a competent Legislature or other competent authority Cambay being a merged State the Administration of the Indian States Order which was made under section 4 of the Extra Provincial Jurisdiction Act, 1947, was saved by the States Merger (Governor's Provinces) Order in so far as it continued in force the levy of Makat which was a tax within the meaning of para 7 of the first mentioned Order. It, therefore, follows that the State Government continue to levy Makat until it is levied by the Cambay Municipality afterfollowing the necessary prodedure.

Sd/- P.M.Lad

o.c. 22/11

Remembbancer of Legal Affairs.

U.R. to L.S.G. & P.H,D. No. 16486, dated 23rd November 1950.

Mjr/25/ /

4 Cs.

Legal Department.

Unless the Jhagadia Municipality has been denoti
the area cannot be constituted into a village under t
Bom. Village Panchayats Act, 1933; and until it is so
denotified the Municipality would be entitled to levy
octroi, provided proper rules for the levy have been frame
by it.

Sd/- J.R.Dhurandhar.

O.C. 2/10/

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. No. 14700 dated, 21st Octobe
1950

Mjr/25/~~8~~3

4 Cs.

Submitted.

2. In R.L.A's opinion No. 9567, dated the 24th Aug. 1949, the R.L.A. has held that section 17(2)(b) of the District Municipal Act, 1901 enables the outgoing councillors to continue to function till a new municipality is constituted and a new President elected. In another opinion No. 1148, dated the 3rd Feb. 1938 the R.L.A. has held that section 17(2)(b) provides only for continuance in office of the outgoing councillors during the intervening period until the new councillors assume office and that this provision is not intended to be utilised for securing the extention of the period of councillors to any length of time. Reading these two opinions together the Commissioner S.D. considers that the logical conclusion is that in a contingency where the elections are not held before the expiry of the term of the councillors, the President and Vice-President as also the various councillors and committees should continue to function pending assumption of office by their successors. He has requested Govt. to clarify whether his view that in such a case the whole body would continue in office or only the President and Vice-President. The L.S.G.P.H.D. view (at 'A' on p. 20) is that section 17(2) (b) is intended to fill the lacuna caused by such contingency; that under this section the term of the Municipality is automatically extended and that the councillors and committees would be entitled to continue in office and transact business of the Municipality during such extended term as they do during the regular term of the Municipality,. The R.L.A. is requested to advise whether the view taken by the L.S.G. & P.H.D. is correct.

Office of the R.L.A.

Bombay District Municipal Act, 1901, section 17(2)(b)

R.L.A's opinion No. 1148 dated 3-2-1948

L.S.G. & P.H.D. has stated in its office note at pages 19-20 ante thus : "Section 17(2)(b) of the Bombay District Municipal Act is intended to fill the lacuna caused by such contingency. Under this section the term of the Municipality is automatically extended and it appears that the Councillors and committee would be entitled to continue in office and transact business of the Municipality during such extended term as they do during the regular term of the Municipality." R.L.A. is requested to advise whether the aforesaid view is correct.

It appears that the aforesaid statement made by the L.S.G. & P.H.D. goes too far. As pointed out by the R.L.A. in his opinion No 1148 dated 3-2-1938" the intervening period contemplated by sub-section (2)(b) of section 17 must be a short one occasioned by certain contingencies such as the holding of general elections. If this provision is utilized for the purpose of securing the extension of the period of Councillors for a greater length of time which could not be achieved otherwise it would be clearly contrary to the spirit and the intention of the Act". It is therefore clear that the intervening period should be as short as possible and the extension of the term of office of the Councillors under that provision is only intended to cover the interregnum required for the new Councillors to come into office. Apparently therefore, during this short intervening period the Councillor and the President and Vice-President are allowed to function with a view to enable the Municipality to carry on its current administration. The term of the Municipality would not be considered as automatically extended under section 17(2)(b) but only deemed to be extended which would indicate that the extension is necessitated by force of circumstances. The Councillors during this period would be entitled to carry on

such.....

such business of the Municipality as would be absolutely necessary for the current administration of the Municipality. The term of committees which generally expires at the end of the term of the Municipality would not be deemed to be extended by virtue of section 17(2)(b) and consequently such committees would not be entitled to function. Only the General Body can continue to carry on the administration during this intervening period.

Sd/- P.M.L.ad

p.c. 8/11

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 15715 dated the 11th November 1950.

Mjr/27/8/

4 Cs

R.I. No. 18624, dt/11-10-50

Submitted.

There are three linked cases wherein the Presidents or vice-president of the Municipalities have resigned and have been re-elected.

The facts of the cases are as follows:-

(1) Lunawada Municipality:- Shri S.V..Raval tendered his resignation of the office of President of the Lunawada Municipality on 1-6-1950 to the Commr. The Commissioner accepted it and directed the Collector Panch Mahals to take steps for election of a new President under section 23(13) of the Bom. District M. Act, 1901. The Municipality unanimously re-elected Shri R. in the vacancy so caused. Relying on R.L.A's opinion No. 5621 dated th 25th June 1951 and No. 2963 dated 16th March 1949, the Director of Local Authorities N.D. considers that although the relection of Shri Raval in the vacancy caused by his own resignation is illegal, the ~~kmmx~~ election cannot be set aside. The L.S.G. & P.H.D. view is that though Shri Raval's re-election contravenes the provisions of section 23(13) of the Bom. District Municipal Act, 1901 the Collr. cannot do anything in the matter and that the election in question if challenged can be set aside by a civil Court alone.

2. Ganderi Municipality: Shri H.M. Desai tendered resignation of the office of President of the Ganderi Municipality on 29-7-1950, to the

-o the Commissioner and in the election held due to his resignation was re-elected as a Pdesident.

3 Dhandhuka Municipality: In this case Shri Parmanand Chunilal applied to the Collector Ahmedabad showing willingness to resign his post as a Vice-President. As section 15-A of the Bom. D.M. Act is not clear on the point// of resignation by the Vice-President the Collector consulted the D.C.P. who appears to have opined that the term "President" would include Vice-President. The Collector therefore forwarded the resignation of Shri P.C. to the Bresident of the Dhandhuka Municilpality for disposal. The President put the resignation before the General Body, which accepted the resignation and re-elected him as Vice-President.

" The director of L.A.N.D. has forwarded these two cases to Government for being decided on the analogy of the Lunawada case." .

The R.L.A. is re quested to advise whether the view taken by the L.S.G. & P.H.D. in case I) is correct.

Office of the R.L.A.

Attention of Local Self Government and Public Health Department is invited to the Bom. Act 52 of 1949 whereby the words "A Councillor " were substituted for t words "some other Councillor" in Sec. 23(13) of the Bom. District Municipal Act, 1901. The re-election of Shri Raval as president of the Lunawada Municipality in the vacancy caused by his own resignation is therefore lawful.

Sd/- P.M.Lad

O.C. 23/12

Remembrancer of Legal Affairs.

U.R. to L.S.G.&P H.D. No 18241, dated the 24th December 1950.

Mjr/27/8/

4 Cs.

R.I. No. 18221 dated 5-12-1950

Submitted.

2. The Karwar Municipality has represented to Government that it has been losing a considerable revenue by way of terminal tax levied on cement, steel, iron etc., when imported into the Municipal limits by the Public Works Department and that Government should consider the advisability of paying the tax to the Municipality The Executive Engineer, Kanara Division has stated that whenever articles such as cement, iron steel. etc., are imported by the Public Works Department into the Municipal limits they are for Govt. use on Government works only and no profit idea is involved. He therefore holds that such articles come within proviso (a) to section 59 of the Bombay District Municipal Act. The R.L.A. is requested to advise.

Mjr/27/8/

4 Cs.

Office of the R.L.A.

Bombay District Municipal Act, 1901. sec. 59(1) - Proviso (a) -

When cement, steel, iron etc. are imported on Government account by Government contractors they would be Government property exempt from the levy of octroi provided they are used for public purposes and not used or intended to be sued for purposes of profit (see the proviso (a) to section 59(1) of the Bombay District Municipal Act, 1901). Government has allowed the payment of octroi on food grains on the ground that they are utimately sold by Government and as such they might be considered as used or intended to be sued for purposes of profit; and that would not affored any proper analogy for exempting from the levy of octroi on cement, steel and iron imported on Government account for the construction of buildings, bridges and other works of Government.

Sd/- P.M.Lad

o.c. 28/12

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 1844, dated 24th December 1950.

Mjr/27/8/

4 Cs.

R.I. No. 15849 d/ 14-10-50

Submitted.

2. It appears that Shri P.D. Ahere the Mamlatdar, who was deputed by the Commissioner C.D. for revision of the Assessment list of the Taloda Municipality, prepared the Assessment list and it was published by the Municipality on 20-7.1950 for inviting objections under section 64 of the Bomvay District Municipal Act, 1901. It has been represented to Government, by almost all the people of Taloda, that the revised Assessment list contains an abnormal increase in the letting values and cannot be allowed to stand. The Collector W.K. Now thinks that the revised list is wrong both in respect of letting values and also rate of calcualtion of house tax, and has recommended that the list may be cancelled and prepared afresh. Relying on R.L.A's opinion No. 13676 dated the 27th September 1950 the L.S.G. & P.H.D. consider that since due regard has to be paid to the actual rents of the buildings while fixing the letting values, the list prepared by Shri Ahire which are based on inflated letting values, needs to be cancelled. The question for R.L.A's consideration is whether it would be competent for the Municipality to cancel the Assessment list after it has been published under section 64 of the Act (Vide A' on p. 144 ante.)

Legal Department.

An assessment list would not be binding unless it has been properly authenticated under section 65(4) of the Bombay District Municipal Act, 1901. The assessment list prepared in the present case has not been so far authenticated. Consequently it has not ye t become operative. It appears from the Collector's report dated the 18th September 1950 at page 45 ante that Shri P.S. Joshi, Mamlatdar, has been appointed to hear objections under section 65(3). Shri Joshi has therefore the power to authenticate the list afterhearing the objections. If a fresh assessment list is proposed to be made the delegation made to Shri Joshi under section 65(3) will have to be cancelled by the Municipality so that the power to authenticate the list should be deemed to have been withdrawn from him. After so cancelling the delegation, the Municipality may notify that the notice of assessment list published under section 64 is cancelled and thereafter it may proceed to cause the assessment list to be made under section 63(1) and to appoint Shri Joshi under section 63(2).

Sd/- J.R.Dhurandhar
24/10

O.C.

Additional Secretary to Government.

U R. to L.S.G. & F.H.D., No. 14872, dated the 26th Oct 1950.

Mjr/27/8/

4 Cs.